



# Excise Tax Advisory

Excise Tax Advisories (ETAs) are interpretive statements issued by the Department of Revenue under authority of RCW 34.05.230. ETAs explain the Department's policy regarding how tax law applies to a specific issue or specific set of facts. They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

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## BTA Nonacquiescence

The Board of Tax Appeals (the BTA), a separate agency from the Department of Revenue, decides both formal and informal administrative appeals from determinations made by the Department of Revenue. BTA decisions bind the Department only for the individual taxpayer's case and for the time period under appeal. BTA decisions in informal cases, by law, cannot be appealed by the Department.

All BTA decisions are available to the public. The Department does not always agree with adverse BTA decisions. In some cases the Department needs to inform the public, tax practitioners, and the Department's employees that it disagrees with an adverse BTA decision. The Department has decided to issue these statements via an ETA or ETA supplement to avoid misunderstandings about how the Department will apply these BTA decisions to other taxpayers' situations.

Any statement issued about a BTA decision may be withdrawn or modified at any time. The lack of a statement issued by the Department about any BTA decision has no meaning. It neither implies agreement or disagreement with a BTA decision.

This advisory is the second supplement to ETA 2009 and announces the Department's nonacquiescence to two BTA decisions. ETA 2009 and its supplements should not be discarded as these documents provide a history of all Department statements of nonacquiescence regarding adverse BTA decisions through an ETA or ETA supplement.

### 1. Tillamook Cheese

The Department of Revenue does not acquiesce in the Board of Tax Appeals' decision in *Tillamook County Creamery Association, d/b/a Tillamook Cheese v. Dept. of Revenue*, Docket No. 58652, October 23, 2003; Order Denying Petition for Reconsideration, December 3, 2003. The Department will not follow the Board's holding that Tillamook Cheese was eligible for the direct seller's representative exemption provided in RCW 82.04.423.

### 2. Modern Staple

The Department of Revenue does not acquiesce in the Board of Tax Appeals' decision in *Modern Staple, Inc. v. Dept. of Revenue*, Docket No. 58436, January 22, 2004; Amended Final Decision, March 22, 2004. *Modern Staple* involved a seller of staples, nails, and other fasteners, and air tools for applying the fasteners. Modern Staple sometimes withdrew tools from inventory and provided them

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free of charge to larger customers who promised to purchase a sufficient volume of fasteners exclusively from Modern Staple. The Department will not follow the Board's holding that the tools were provided under a lease rather than a bailment.

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